

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed By Consumers Against Entities Regulated by the Commission)	CI Docket No. 02-32
)	
)	
Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers)	CC Docket No. 94-93
)	
)	
2000 Biennial Regulatory Review)	CC Docket No. 00-175

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, AT&T Corp. ("AT&T") submits this reply to comments filed by other parties on the Notice of Proposed Rulemaking (FCC 02-46, released February 28, 2002) in this proceeding ("NPRM"), proposing the adoption of a "unified, streamlined process for the intake and resolution of informal complaints filed by consumers" against entities regulated by the Commission (NPRM, ¶ 1).¹

¹ In addition to AT&T, comments were filed by The National Association of Broadcasters ("NAB"); the National Association of State Utilities Commission Advocates ("NASUCA"); the National Cable & Telecommunications Association ("NCTA"); Nextel Communications, Inc. ("Nextel"); The Office of the People's Counsel for the District of Columbia ("OPC-DC"); The Personal Communications Industry Association ("PCIA"); SBC Telecommunications, Inc. ("SBC"); Telecommunications for the Deaf, Inc.. ("TDI"); the Texas Public Utilities Counsel ("TOPUC"); the Verizon telephone companies ("Verizon"); Verizon Wireless; and WorldCom, Inc. ("WorldCom").

None of the commenters or the NPRM itself even purports to show that existing complaint procedures -- which include not only Commission mechanisms, but also processes controlled by local franchising authorities and state officials -- are inadequate to address consumers' concerns regarding non-common carrier services provided by cable operators. As NCTA notes, the NPRM seeks to address "those informal consumer complaints concerning issues for which there is no established resolution procedure and which are not subject to the jurisdiction of another governmental agency," but fails to "identify any aspects of cable regulation that might fall into this category."² NCTA also persuasively demonstrates, using the Commission's own published statistics, that cable operators have accounted for a tiny fraction of complaints received by the Commission, and that the majority of those complaints address subjects that are either outside the Commission's jurisdiction and/or are addressed by existing procedures.³

There is thus no basis for the Commission to adopt the NPRM's proposed extension of informal or formal complaint process to cable operators' non-common carrier services. AT&T's reply comments are therefore limited to addressing the NPRM's proposals for revisions to the Commission's procedures and practices as those revisions bear on processing informal complaints against common carriers.

² NCTA, p. 2 (quoting NPRM ¶ 4); see also AT&T, pp. 3-6; NAB, p. 2 ("The Commission has not established -- nor even claimed -- that its current complaint process is in any way deficient.").

³ See NCTA, pp. 2-6.

I. ANY REVISIONS TO THE INFORMAL COMPLAINTS RULES SHOULD ASSURE SUFFICIENT INFORMATION IS FURNISHED TO ALLOW EFFECTIVE INVESTIGATION AND RESPONSE TO THOSE CLAIMS.

The NPRM (§ 11) identifies six key data items and related documentation that should ordinarily be included in informal complaints to fulfill the Commission’s dual objectives of facilitating the ability of consumers to lodge complaints and of regulated entities to investigate and satisfy meritorious claims. The comments -- including, in particular, those of other public agencies – overwhelmingly confirm that the efficacy of the Commission’s informal complaint process will best be served by providing as much relevant information as possible about such claims to regulated entities, so that they may investigate and respond to these complaints.⁴ For example, NASUCA (p. 9) “acknowledges that consumers should exercise responsibility in filing informal complaints,” and further acknowledges that “some combination of the [NPRM’s] six criteria is necessary to address any particular informal complaint.” Similarly, TOPUC (p. 3) acknowledges that “the information called for in the proposed rule are all relevant considerations in processing a complaint.”

Like AT&T (p. 2), other commenters across a broad spectrum of interests recognize that the Commission should facilitate the filing of online complaints

⁴ See, e.g., Nextel, pp. 2-3; TDI, p. 5 (supporting “clear guidelines for what information consumers should provide when filing an informal complaint with the Commission”); SBC, p. 3; Verizon, p. 1 (absent specificity in informal complaints, “a defendant may not receive adequate notice of the potential claim[.]”); Verizon Wireless, pp. 4-5 (noting that “less than complete information lead[s] to difficulties identifying the account or the proper carrier”); WorldCom, pp. 3-4.

and other modes of transmission, consistent with the objective of assuring that information necessary to investigate those claims is provided to regulated entities.⁵ Those commenters that address the issue also agree with AT&T (p. 4 n. 3) that, especially if the Commission expands its informal complaint processes, it should designate such complaints as documents that are not routinely available for public inspection.⁶

AT&T does not agree, however, with those commenters who suggest that regulated entities to provide a “single point of contact” for intake of customer complaints.⁷ As SBC (pp. 2-3) and Verizon Wireless (pp. 2-3) correctly point out, carriers’ customers already have numerous appropriate points of contact with their service providers, using toll-free numbers, to address billing, repair, maintenance and other issues. No “single point of contact” could be expected to be capable of addressing all of these concerns, especially given the multi-state, multi-service business operations of many common carriers.⁸

⁵ See NASUCA, p. 11; OPC-DC, p. 8; TDI, p. 5; TOPUC, p. 3.

⁶ See NASUCA, pp. 14-16; OPC-DC, p. 9; WorldCom, p. 6.

⁷ See NASUCA, pp. 5-6; TOPUC, p. 2.

⁸ The NPRM’s proposal would be equally misplaced for cable operators. The Commission’s rules require monthly cable bills (among other documents) to include the name, address and phone number of each customer’s LFA. 47 C.F.R. § 76.952; see also id. § 76.1602(b)(6) & (7). Cable operators, which are subject to substantial oversight by local franchise authorities, also frequently provide local offices that are available for in-person resolution of customer concerns. While some service providers might determine that they can most efficiently serve their customers through single point of contact, others may more effectively do so via local or regional offices.

Equally misplaced are suggestions by some commenters that the Commission should adopt administrative rules prescribing a fixed timeframe -- in one proposal, as short as 20 days -- in which carriers must respond to informal complaints.⁹ None of the commenters that supports embedding a time limit in the Commission's rules makes any showing that the current process, in which the staff has the discretion to set deadlines based on the circumstances of a particular claim, has in any way disserved customer interests.¹⁰ Moreover, even where a customer provides all relevant information concerning an informal complaint (and, as the record abundantly demonstrates, such claims are frequently deficient in critical respects), defendant carriers are entitled as a matter of due process to a reasonable opportunity to investigate those allegations and to prepare and serve their written response.¹¹

In addition to preserving the fundamental fairness of the informal complaint process, the Commission should reject proposals that would impose significant compliance burdens on regulated entities without any commensurate benefit for the resolution of legitimate claims. In particular, the Commission should reject NASUCA's suggestion (p. 6) that all regulated entities provide , inter alia, all "corporate names and addresses," "relevant website addresses," and "customer service

⁹ See OPC-DC, 6 (20 days); TOPUC, p. 4 (30 days); NASUCA, p. 12 (30 days with opportunity to request a single 15 day extension); TDI, p. 4 (30 day limit "regardless of the complexity of the [complaint's] underlying problem").

¹⁰ See also SBC, p. 4 (constraining staff discretion "will make it more difficult for parties and the [Commission] to administer the informal complaint process"); WorldCom, p. 4.

¹¹ See WorldCom, p. 4 (noting that 30 days is the minimum needed to research a claim and formulate a response)..

locations.” This proposal rests on a gross misconception of the scale and complexity of large corporations. Requiring companies subject to regulation by the Commission to provide exhaustive lists of all the corporate entities they maintain, all locations at which they have offices, and a constantly-changing list of web addresses (among many other pieces of data NASUCA proposes) would inundate the Commission with data that NASUCA does not even attempt to show would be used or useful in resolving customer complaints.¹²

II. THE COMMISSION SHOULD REJECT THE PROPOSED CHANGE TO THE BASIS FOR CALCULATING RELATION BACK OF FORMAL COMPLAINTS.

Only one commenter, TOPUC, has supported the NPRM’s proposed change to Section 1.718 of the Commission’s rules (47 C.F.R. § 1.718), governing the basis for calculating “relation back” for the filing of a formal complaint based on an otherwise timely filed informal complaint for the same claim.¹³ TOPUC claims (p. 4)

¹² For example, customers know that they need to contact “AT&T” or “AT&T Broadband,” as appropriate, with customer service concerns; the identity of the corporate entity that serves them is essentially immaterial to both customers and the Commission.

The Commission should also reject NASUCA’s suggestion (p.12) that unspecified “state agencies” be permitted to refer any complaints they receive directly to the FCC, and that the Commission deal with the referring agency, rather than the complainant, in resolving such matters. The insertion of an additional administrative “layer” between complainants and defendants can only render the informal complaint process less effective. It is also unclear what authority “state agencies” may have under their respective states’ laws to act in a representative capacity in a federal legal proceeding, and the Commission should avoid being drawn into these legal questions.

¹³ TOPUC is likewise the only party that has supported eliminating any deadline for the filing of an informal complaint. Cf. NPRM ¶ 20 (soliciting comment on relationship of Communications Act Section 415 to informal complaint

that retaining the current rule that has been in effect since 1986, under which relation back is measured from the date of the carrier's report denying the informal complaint in whole or in part, would somehow "eviscerate the Commission's informal complaint process."¹⁴ TOPUC further asserts (*id.*) that, if the Commission adheres to its longstanding procedure, "consumers would in all likelihood choose the formal process" in lieu of informal complaints, thereby unnecessarily proliferating the latter category of complaints.

These exaggerated claims do not withstand analysis. As AT&T noted in its Comments (p. 6), residential and small business customers who are the focus of the NPRM's proposals almost never invoke the formal complaint process; with very few exceptions, none of those claimants desires to pursue the detailed pleading and

(Footnote continued from preceding page)

process). However, as AT&T showed in its Comments (pp. 7-8), and as other commenters' filings confirm, except as specifically prescribed in Section 415 the Commission lacks subject matter jurisdiction to entertain any complaint (be it informal or formal complaint) that accrued more than two years prior to the filing date of that claim. See Verizon Wireless, p. 6 (Section 415 applies to "all complaints against carrier" and does not distinguish between formal and informal complaints")(emphasis supplied); see also SBC, p. 5; Verizon, pp. 3-4.

¹⁴ See *Amendment of Subpart E of Chapter 1 of the Commission's Rules to Improve Efficiency and Clarity of Informal Complaint Procedures and Requirements*, Order, FCC 86-153 (April 18, 1986)("1986 Order")(adopting current Section 1.718 of the commission's rules). Similarly, TOPUC's additional objection (p. 5) to conferring discretion on the Commission staff to terminate certain informal complaints without contacting the complainant ignores that the existing rules have long provided for such treatment by the staff in appropriate circumstances. *1986 Order*, ¶ 4; 47 C.F.R. § 1.717.

procedural requirements that the formal complaint process entails.¹⁵ TOPUC's further claim that the Commission's current relation back procedure deters claimants from pursuing the informal complaint process is belied by the tens of thousands of informal complaints that are filed annually by consumers.¹⁶

The current procedure, under which relation back is measured from the date of the carrier's report responding to the informal complaint provides predictability for all parties and the Commission, because the expiration of the six-month period within which complainants must pursue any further action regarding their claims is readily determinable. By contrast, as AT&T and other commenters demonstrated,¹⁷ measuring relation back from the issuance at an indeterminate date of notice of the Commission's disposition of informal complaints would introduce substantial uncertainty, unfairness and burdens into what is now an easily applied process both for parties to those complaints and for the Commission. In addition to the substantial problem of preserving records related to an informal complaint for an open-end period, defendants would be subject to the serious adverse risk of being deprived of information necessary to defend against such claims as knowledgeable personnel

¹⁵ See also WorldCom, p. 5 (noting that consumers who desire to pursue the formal complaint process can bypass the informal process altogether).

¹⁶ See, e.g., *Consumer & Governmental Affairs Bureau Quarterly Report on Informal Consumer Complaints and Inquiries Received* (released May 7, 2002)(in first quarter of calendar 2002 alone, Commission staff processed 7,204 complaints against wireline carriers).

¹⁷ See AT&T, pp. 8-9; SBC, pp. 4-6; Verizon, pp. 2-5; Verizon Wireless, pp. 7-9; WorldCom, pp. 5-6.

resign, retire or die.¹⁸ Protection against such risks posed by stale claims is exactly what the statute of limitations is intended to prevent.

The procedure proposed in the NPRM also would impose unnecessary burdens on scarce agency resources to issue timely notice of the staff's dispositions of informal complaints.¹⁹ And, as AT&T showed (p. 9), such notice is in all events superfluous because informal complaints are not adjudicative proceedings in which the Commission is authorized to make dispositive findings.²⁰ Accordingly, the Commission should decline to adopt the revision to its relation back rule proposed in the NPRM.

¹⁸ See SBC, p. 5; see also Verizon, p. 4 (even if personnel are still available several years after claim arose, their recollections of events may have faded).

¹⁹ See Verizon, pp 2, 4; Verizon Wireless, p. 5.(both noting long delays in staff notices of dispositions of some informal complaints). In this respect, the NPRM's proposal represents a significant step backward from the current relation back practice, which the Commission adopted precisely because it reduces cost for the Commission and obviates delay for complainants in determining whether further action to pursue their claim may be warranted. See *1986 Order*, ¶ 3.

²⁰ See also WorldCom, p. 4 (noting that staff dispositions simply indicate the matter is closed).

Respectfully submitted,

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